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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

**CENTER FOR BIOLOGICAL
DIVERSITY, et al.,**

Plaintiffs,

v.

DAVID BERNHARDT, et al.,

Defendants.

Case No. 4:19-cv-05206

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED**

Judge: Hon. Jon S. Tigar

Pursuant to Civil Local Rules 3-12 and 7-11, Plaintiffs State of California, by and through
Xavier Becerra, Attorney General; Commonwealth of Massachusetts, by and through Maura Healey,
Attorney General; State of Maryland, by and through Brian Frosh, Attorney General; State of
Colorado, by and through Phil Weiser, Attorney General; State of Connecticut, by and through
William Tong, Attorney General; State of Illinois, by and through Kwame Raoul, Attorney General;
People of the State of Michigan, by and through Dana Nessel, Attorney General; State of Nevada, by

1 and through Aaron Ford, Attorney General; State of New Jersey, by and through Gurbir S. Grewal,
 2 Attorney General; State of New Mexico, by and through Hector Balderas, Attorney General; State of
 3 New York, by and through Letitia James, Attorney General; State of North Carolina, by and through
 4 Joshua H. Stein, Attorney General; State of Oregon, by and through Ellen Rosenblum, Attorney
 5 General; Commonwealth of Pennsylvania, by and through Josh Shapiro, Attorney General; State of
 6 Rhode Island, by and through Peter F. Neronha, Attorney General; State of Vermont, by and through
 7 Thomas J. Donovan, Jr., Attorney General; State of Washington, by and through Robert W.
 8 Ferguson, Attorney General; District of Columbia, by and through Karl A. Racine, Attorney
 9 General; and the City of New York, by and through Georgia Pestana, Acting Corporation Counsel
 10 (collectively, “State Plaintiffs”), respectfully move the Court to consider whether the above-entitled
 11 action is related to a new action that was recently filed by State Plaintiffs in this District: *State of*
 12 *California, et al. v. Bernhardt, et al.*, Case No. 3:19-cv-06013-LB (N.D. Cal., complaint filed Sept.
 13 25, 2019).

14 Under Civil Local Rule 3-12(a), two cases are related when: (1) they “concern substantially
 15 the same parties, property, transaction or event,” and (2) it “appears likely that there will be an
 16 unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted
 17 before different Judges.” Both conditions are met here.

18 First, the actions concern substantially the same “event” because both cases challenge actions
 19 by the Secretary of the Interior and the Secretary of Commerce, acting through the U.S. Fish &
 20 Wildlife Service (“FWS”) and the National Marine Fisheries Service (“NMFS”) (collectively, “the
 21 Services”), to promulgate three separate final rules (“Final Rules”) that undermine key requirements
 22 of the federal Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 *et seq.* See 84 Fed. Reg. 45,020
 23 (Aug. 27, 2019) (the “Listing Rule”); 84 Fed. Reg. 44,976 (Aug. 27, 2019) (the “Interagency
 24 Consultation Rule”); 84 Fed. Reg. 44,753 (Aug. 27, 2019) (the “4(d) Rule”). Also, both challenges
 25 involve the same federal defendants. See *Fin. Fusion, Inc. v. Ablaise Ltd.*, No. C-06-2451 PVT,
 26 2006 WL 3734292, at *3 (N.D. Cal. Dec. 18, 2006) (holding cases were related where they involved
 27 the same property and defendants).
 28

1 Second, it is likely that there would be an unduly burdensome duplication of labor, and/or
2 conflicting results, if the cases were conducted before different judges because both cases deal with
3 the same facts and will involve the same administrative record for the Final Rules. Moreover, both
4 cases involve the same or similar legal questions regarding whether Final Rules are contrary to the
5 ESA, whether the Services provided a sufficient rationale for the Final Rules as required by the
6 Administrative Procedure Act (“APA”), and whether the Services complied with their legal
7 obligations under the National Environmental Policy Act (“NEPA”) in issuing the Final Rules.
8 *Compare* ECF No. 1, ¶¶ 88-108, with *State of California*, Case No. 3:19-cv-06013-LB, ECF No. 1,
9 ¶¶ 117-141; *see also Fin. Fusion*, 2006 WL 3734292, at *3–4.

10 For the foregoing reasons, and pursuant to Civil Local Rule 3-12(b), State Plaintiffs
11 respectfully request that the Court relate this case and Case No. 3:19-cv-06013-LB.
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Dated: September 27, 2019

Respectfully submitted,

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**Application for admission pro hac vice
forthcoming*

CERTIFICATE OF SERVICE

I, Ryan Mallard, am employed by the State of California, Office of the Attorney General. I am over the age of eighteen years and not a party to this action. My business address is 1515 Clay Street, 20th Floor, Oakland, CA 94612.

I hereby certify that on September 27, 2019, I electronically filed the foregoing ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED with the Clerk of Court using the CM/ECF system, which will send notification of the same to all CM/ECF participants.

In addition, I served via overnight mail the foregoing ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED on the parties identified below:

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Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
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National Marine Fisheries Service
1315 East-West Highway
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I hereby declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 27th day of September, 2019 in Oakland, California.

/s/ Ryan Mallard
Ryan Mallard